SUPREME COURT OF THE UNITED STATES.

No. 294.

THE UNITED STATES, APPELLANTS,

vs.

THE STEAMER ELEANOR, HER TACKLE, APPAREL, &c.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF LOUISIANA.

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1 *Libel of information.—Filed June* 20, 1865.

To the honorable the judges of the circuit court of the United States for the sixth judicial circuit and eastern district of Louisiana.

The libel of information of Rufus Waples, attorney of the United States for the eastern district of Louisiana, who prosecutes for the said United States in this behalf, and being here present in court, in his own proper person, in the name and behalf of the said United States of America, and Charles Black, sr., informant, against the steamer Eleanor, her tackle, apparel, and furniture, hereinafter described, and against all persons intervening for their interest therein, in a case of seizure and forfeiture, alleges, propounds, and declares as follows:

I. That Cuthbert Bullitt, esq., marshal of the United States for the said district, under written authority given him by the said attorney, in compliance with instructions issued by the Attorney General of the United States to the district attorneys thereof, and by virtue of the act of Congress, approved on the sixth day of August in the year of our Lord one thousand eight hundred and sixty-one, entitled "An act to confiscate property used for insurrectionary purposes," heretofore, that is to say, on the 15th day of June, in the year one thousand eight hundred and sixty-five, seized as forfeited to the United States, at New Orleans, within said district, and within the jurisdiction of this court, the steamer Eleanor, her tackle, apparel, machinery, and furniture.

2 II. That by the act of the Congress of the United States, approved August 6, 1861, entitled "An act to confiscate property used for insurrectionary purposes," it was provided, "that if, during the present or any future insurrection against the government of the United States, after the President of the United States shall have declared, by proclamation, that the laws of the United States are opposed, and the execution thereof obstructed by combinations too powerful to be suppressed by the ordinary course of judicial proceedings, or by the power vested in the marshals by law, any person or persons, his, her, or their agent, attorney, or employee, shall purchase or acquire, sell or give, any property of whatever kind or description, with intent to employ the same, or suffer the same to be used or employed, in aiding, abetting, or promoting such rebellion or resistance to the laws, or any person or persons engaged therein; or if any person or persons, being the owner or owners of any such property, shall knowingly use or employ, or consent to the use or employment of the same as aforesaid, all such property is hereby declared to be lawful subject of prize and capture wherever found; and it shall be the duty of the President of the United States to cause the same to be seized, confiscated, and condemned."

III. That the President of the United States did, on the 15th of April, 1861, declare by proclamation, "that the laws of the United States are opposed and the execution thereof obstructed by combinations too powerful to be suppressed by the ordinary course of judicial

proceedings, or by the power vested in the marshals by law;" and that on the 16th of August, 1861, he did reiterate said proclamation, and did declare that "such insurrection" still existed and had not been suppressed.

IV. 1. That the property hereinabove described was used and employed knowingly by the owner or owners thereof, in aiding, abetting, or promoting the said insurrection and resistance to the laws, within the meaning of the said act of Congress, after the approval of the said act, and after the public proclamations of the President above mentioned, and after the 16th day of August, 1861, by being used in the transportation of confederate troops in insurrection against the gov. of the United States, and in transporting munitions of war and supplies for the said troops.

2. That the property herein described was used and employed, knowingly, by the owner or owners thereof, in aiding and abetting persons engaged in the said insurrection and resistance to the laws, within the meaning of the said act of Congress, after the approval of said act, and after the public proclamations of the President above mentioned, and after the 16th day of August, 1861, by being used in the transportation of troops of the so-called confederate troops, and in the transportation of munitions of war and supplies for the use of the said troops.

3. That the said property was purchased, and acquired, and sold, and given, by the owner or owners thereof, or by his, her, or their agent or employee, with intent to use or employ the same for the purpose of aiding, abetting, and promoting the said insurrection and resistance to the laws, after the approval of said act, and after the public proclamations above mentioned, and after the 16th day of August, 1861, by being used in transporting troops of the so-called Confederate States, and in transporting munitions of war and supplies for the use of said troops in insurrection against the United States.

4. That the owner or owners of the said property did knowingly consent to the use or employment of it for the purpose of aiding, or abetting, or promoting said insurrection and resistance to the laws, or of aiding, abetting, or promoting persons engaged therein, after the approval of said act, and after the proclamations above mentioned, and after the 16th day of August, 1861, by permitting the use of the boat as aforesaid.

5. That the owner or owners of said property, his, her, or their agent or employee, did suffer said property to be used or employed in aiding, abetting, and promoting the insurrection proclaimed by the President as aforesaid, and in aiding, abetting, or promoting a person or persons engaged in said insurrection, after the approval of act above mentioned, and after the proclamation of the President, duly made public on the 16th day of August, 186 , by permitting the use of the property as aforesaid.

V. That by reason of the premises, the property herein described became and was forfeited to the United States, and ought to be confiscated and condemned to the use of the said United States as enemy property.

Wherefore, the said attorney, in the name and behalf of the United States of America, prays that process of monition may issue against the said property and the owner or owners thereof, and against all persons interested or claiming an interest therein, warning them at some early day, to be named therein, to appear and answer
3 this libel of information; and that an order of publication may be made in the usual form; and that all due proceedings being had, this hon. court may be pleased to decree for the condemnation and forfeiture of the said property to the use and ownership of the said United States, and of Charles Black, sr., informant, and he prays for such further relief as the court is competent to give in the premises.

(Signed) RUFUS WAPLES,
U. S. Att'y for East. Dist. of La.

Filed June 20th, 1865.

4 *Order of publication.—Issued June 27th*, 1865.

United States circuit court for the sixth judicial circuit and eastern district of Louisiana.

UNITED STATES
vs.
THE STEAMER ELEANOR, tackle, apparel, and furniture. } No. 3,597.

Whereas, the steamer Eleanor, her tackle, apparel, machinery, and furniture described in the libel filed by the district attorney, and now of record in this court, and all the right, title, and interest therein, has been seized by the marshal of the United States for the eastern district of Louisiana, by virtue of an act of Congress, approved on the sixth day of August, in the year of our Lord one thousand eight hundred and sixty-one, entitled "An act to confiscate property used for insurrectionary purposes;" and whereas the United States
5 attorney for the eastern district of Louisiana did, on the 20th day of June, A. D. 1865, file a libel of information in this court, praying the condemnation of said property and real estate, under the act aforesaid, and that process of monition issue against the owner and owners of said property and all persons interested or claiming an interest therein, warning them at some early day to appear and answer said information.

It is therefore on this 27 June, in the year of our Lord eighteen hundred and sixty-five, ordered that notice be given to the owner and owners of said property, and all persons interested or claiming an interest therein, to appear and answer this information on the 17th day of July, 1865, and show cause, if any they have, why said property and the right, title, and interest therein, should not be condemned and sold according to law; and that notice be given by posting a copy of this order upon the front door of the court house of the district, and by publication in the Times newspaper twice a week previous to said 17th day of July. A. D. 1865, the first publi-
6 cation to be on or before the 3d July, 1865.

New Orleans, June 27th, 1865.

(Signed) E. H. DURELL, *Judge.*

Warrant.—Issued June 27, 1865.

The President of the United States of America to the marshal of the east. district of Louisiana, or to his lawful deputy, greeting:

You are hereby commanded forthwith to seize, and into your possession take, the steamer Eleanor, her tackle, apparel, machinery, and furniture described in the libel filed by the district att'y, now of record in this court, and now libelled by the United States for the causes set forth in the libel pending in the circuit court of the United States for the sixth judicial circuit and eastern district of Louisiana, that you do cite and admonish the owner or owners
7 and all and every other person or persons having or pretending to have, any right, title, or interest in or to the same, to be and appear before a circuit court of the United States for the district aforesaid, to be holden at the city of New Orleans, on or before the third Monday from the service hereof, to show cause, if any they have or can, why the said property should not be condemned and sold agreeably to the prayer of the libellant, and how you have executed this warrant, that you make return according to law.

Witness the honorable Salmon P. Chase, Chief Justice of the Supreme Court of the United States, this 27th day of June, A. D. 1865, and 89th year of the independence of the United States.

(Signed) F. B. VINOT, *D'y Clerk.*

Marshal's return.

Received June 30th, 1865, and having seized and taken into my possession the property named within, on the authority of a
8 previous writ, I posted a copy of this warrant, the libel, and the order of the judge, on the door of the court house, and published the monition in New Orleans Times, a daily paper printed in New Orleans, on the 1st, 6th, 11th, 15th July, 1865.

Ret. July 17th, 1865.

(Signed) A. BOUDOUIN, *D'y.*

Monition.

In the United States circuit court for the sixth circuit and eaterns district of Louisiana, No. 3,597.

UNITED STATES
vs.
THE STEAMER ELEANOR, tackle, apparel, etc. } No. 3,597.

In obedience to an admiralty warrant, to me directed in the above-entitled suit, I have seized and taken into my possession the steamboat Eleanor, her tackle, apparel, etc., now libelled by the
9 United States of America for the causes set forth in the libel now pending in the circuit court of the United States, and I do hereby cite and admonish the owner or owners thereof, and all and every person or persons having or pretending have any right, title,

or interest in or to the same, to be and appear at a circuit court of the United States for the district aforesaid, to be holden at the city of New Orleans, on or before the third Monday from the date hereof, to show cause, if any they have or can, why the said steamer, her tackle, apparel and furniture, should not be condemned as aforesaid to the United States, and be sold agreeably to the prayer of libellants, and the proceeds thereof be distributed according to law.

United States marshal's office, New Orleans, 30th day of June, 1865.

(Signed) CUTHBERT BULLIT,
U. S. Marshal.

10 *Claim of J. Levy, jr., and J. Strous.—Filed July 3d, 1865.*

In the U. S. circuit court, east. dist. of Louisiana.

UNITED STATES
vs.
STEAMER ELEANOR, her tackle, apparel, etc. } No. 3,597.

And now comes S. Levi and J. Strous, of the city of New Orleans and State of Louisiana, and claim as their own property said steamboat Eleanor, her tackle, apparel, etc., seized by the United States and libelled and propounded against as forfeited in and by the libel of information aforesaid, to wit: Under the act of Congress, approved on the 6th August, 1861, entitled: "An act to confiscate property used for insurrectionary purposes." And the said S. Levi alleges that at the time of the seizure aforesaid, they were and yet are the true, lawful, and sole owners and proprietors, bona fide, of
11 said steamboat Eleanor, her tackle, apparel, etc.; and of this they are ready to make due proofs by their own oath and otherwise as the court shall direct.

(Signed) C. ROSELIUS, *Proctor.*
(Signed) J. LEVY, JR.

Sworn to and subscribed before me, this 3d July, 1865.
(Signed) F. B. VINOT, *D'y Cl'k.*

Bond for costs.—Filed July 3d, 1865.

UNITED STATES OF AMERICA, *East. Dist. of Louisiana, to wit:*

Personally appearing before me, the undersigned United States commissioner for the east. dist. of Louisiana aforesaid, S. Levy, jr., for himself and John Strous, as principal, and John D. Welbanks, as surety, do hereby acknowledge themselves, jointly and severally, to be indebted unto the United States in the full sum of two
12 hundred and fifty dollars lawful money of the United States, to be levied of their goods, chattels, lands, and tenements, the use of the said United States, and for the payment whereof they jointly and severally bind themselves, their heirs, executors, and administrators, firmly by these presents.

Whereas, in the matter of the United States *vs.* the steamer Eleanor, &c., No. 3,597, of the docket of the circuit court of the United States for the eastern dist. of La., a libel of information has been filed on behalf of the United States.

This obligation to be null and void, on condition that the said S. Levy, jr., and John Strous shall abide by the final decree rendered in the cause, and pay all such costs, expenses, and damages as shall be awarded by the court upon the final decree, whether it is
13 rendered in the original or appellate court; otherwise, this obligation to remain in full force and virtue.

(Signed) J. LEVY, Jr. [L. S.]
(Signed JOHN D. WILBANKS. [L. S.]

Signed and sealed at the city of New Orleans, this 3d day of July, 1865, in presence of—

(Signed) CHS. CLAIBORNE,
U. S. Commissioner in and for the Eastern District of Louisiana.

Petition and order to bond.—Filed July 3d, 1865.

U. S. circuit court, 6th circuit and east. dist. of Louisiana.

UNITED STATES *vs.* ST'R. ELEANOR. } No. 3,597.

The petition of J. Levy and J. Straus, residing in the city
14 of New Orleans, respectfully represents, that they are the true, sole, and bona fide owners of said st'b. Eleanor, her tackle, etc., that they have accordingly intervened herein and made claim of said steamboat, etc., that she is now under seizure in the hands of the U. S. marshal by virtue of process issued herein; that they are desirous of releasing said boat, &c., from seizure upon executing bond and security according to law, to the satisfaction of the court.

Whereupon they pray the court to order an appraisement of said steamboat to be made according to law; that said steamboat may be released from seizure and delivered to your petitioners upon their furnishing bond and surety, cautioned according to law, to the satisfaction of the court; and they pray for general relief, and they will ever pray, etc., etc.

(Signed) C. ROSELIUS, *Proctor.*

15 *Order.*

Let the steamboat Eleanor, her tackle, etc., be appraised by Heartt & Swain, and let the petitioners, S. Levi and J. Straus, be permitted to bond the same upon furnishing a stipulation in a sum exceeding by one-half the appraised value thereof, with good and solvent security, conditioned as the law directs, and upon payment of costs of appraisement.

July 3d, 1865.

(Signed) E. H. DURELL, *Judge.*

Notice to appraisers.—Issued 3d July, 1865.

United States circuit court, east. dist. of La.

UNITED STATES
vs.
THE STEAMER ELEANOR, her tackle, etc., etc. } No. 3,597.

To H. G. Heartt and Richard Swain, take notice that you
16 have been this day appointed appraisers for the purpose of ascertaining the value of the property libelled in this case, and you are to file the report of your appraisement within the shortest possible delay.

By order of court.

New Orleans, July 3d, 1865.

(Signed) F. B. VINOT, *D'y Cl'k.*

17 *Marshal's return.*

Received July 3d, 1865, and on the same day, month, and year, served a copy of this notice on Heartt and Swain, appraisers, in the hands of Richard Swain, one of the appraisers named herein.

July 3d, 1865.

(Signed) A. BOUDOUIN, *Dep'ty.*

Appraiser's report.—Filed July 3d, 1865.

18 To the honorable circuit court for the eastern dist. of La.

THE UNITED STATES
vs.
St. ELEANOR, tackle, apparel. } No. 3,597.

We, the undersigned appraisers to this honorable court, duly appointed and sworn, have the honor to report: That on the third day of July, 1865, we proceeded on board Str. Eleanor for the purpose of ascertaining her value, and after a careful and thorough examination, find that she is about six years old, built in Cincinnati, 1859; 198 tons burthen. And on a careful examination of the said boat, her boilers, engines, tackle, and apparel, we do hereby value and appraise the said boat, her tackle apparel, at the sum of seventy-five hundred dollars ($7,500) cash, and no more.

Given under our hands this third day of July 1865.

19 (Signed) RICHARD SWAIN,
(Signed) ———— ————,
U. S. Appraisers, N. Orleans,

Appraiser's bill.—Filed July 3d, 1865.

UNITED STATES COMMISSIONER'S OFFICE,
Appraiser's Department, New Orleans, July 3d, 1865.

In the matter of the steamer Eleanor, to appraiser's office, Dr.
1865, July 3. For app., &c., and examination of $7,500 *a*
1 p.c..... $75 00

20 . *Release bond.—Filed July 6th*, 1865.

UNITED STATES OF AMERICA, *Eastern District of Louisiana:*

Know all men by these presents, that we, S. Levy, jr., in his own name and behalf and as the agent of J. Strouss, of , claimant and owners of the steamer Eleanor, her tackle, etc., as principal, and John B. Poff and Samuel C. Head as sureties, are held and firmly bound unto the United States of America, libellant, in the sum of eleven thousand two hundred and fifty dollars, lawful money of the United States of America, for the payment whereof to the said United States of America, we jointly and severally bind ourselves, our heirs, executors, and administrators, firmly by these presents.

Witness our respective names and seals hereunto affixed by us, at New Orleans, this 6th day of July, one thousand eight hundred and sixty-five.

Whereas, an admiralty warrant was lately issued out of the honorable the circuit court of the United States of America for the eastern district of Louisiana, at the suit of the United States *vs.* the steamer Eleanor, her tackle, apparel, and furniture, and numbered 3,597 on the docket of the said court, commanding the marshal to seize and take into his possession the steamer Eleanor, which has been seized accordingly, but has been released from said seizure and delivered to said claimants and owners, and thereof by reason of the signing, sealing, and delivery of these presents, said S. Levy, jr., and J. Strous having obtained leave of court to bond said property, and filed a claim thereto, which is now of record in the clerk's office of this court.

Now, the condition of the above obligation is such, that if the said claimant and sureties abide by all the orders, interlocutory or final, of the court, and pay the said libellants the amount awarded by the final decree, rendered in the court to which the process is returnable, or in any appellate court, then the foregoing obligation is to be void; but otherwise shall remain in full force and virtue.

(Signed) [SEAL.] S. LEVY, JR.
(Signed) [SEAL.] SAM. C. HEAD.
(Signed) [SEAL.] JOHN B. POFF.

Signed, sealed, and delivered in the presence of—
(Signed) CHARLES CLAIBORNE, *U. S. Com'ner.*

21 John B. Poff and Samuel C. Head, sureties on the within bond, being duly sworn, say that they reside, the said Head at Shreveport, La., and said John B. Poff in the city of New Orleans, and are worth, each, the sum of five thousand six hundred and twenty-five dollars over and above all their debts and liabilities.

(Signed) SAMUEL C. HEAD.
(Signed) JOHN B. POFF.

Sworn to and subscribed before me, this 6th day of July, 1865.
(Signed) CH'S CLAIBORNE,
U. S. Com'ner.

22 *Writ of release.—Issued July 6th, 1865.*

United States circuit court, eastern district of Louisiana, New Orleans, July 6th, 1865. Clerk's office.

UNITED STATES
vs.
THE STEAMER ELEANOR, &c. } No. 3,597.

The President of the United States of America, to the marshal of the eastern district of Louisiana or his lawful deputy, greeting:

Whereas S. Levy, jr., and J. Strouss, claimants and owners of said steamer, hath this day filed a claim thereto, on behalf of themselves, and obtained leave of court to bond the said steamer, and which said claim is now of record in this office.

You are hereby authorized to release to said steamer from seizure, and her to restore to the possession and custody of said
23 claimants on giving bond conditioned as required by the order of court, and otherwise complying with the rules of the court, etc., and make return hereon of your doings in the premises.

Witness the Hon. Salmon P. Chase, Chief Justice of the Supreme Court, at New Orleans, this 6th day of July, A. D. 1865, and in the 90 year of the independence of the United States.

(Signed) F. B. VINOT, *D'y Cl'k.*

Marshal's return.

Received July 6th, 1865, and on the same day, month, and year released unto the claimants, S. Levy, jr., the steamer Eleanor, her tackle, apparel, and furniture, in obedience to this writ, and took from said Levy a receipt for said boat, which receipt is on file in the U. S. marshal's office.

New Orleans, July 6th, 1866.

(Signed) J. J. PREIS,
D'y U. S. Marshal.

24 *Answer of claimants.—Filed July 22d, 1865.*

United States circuit court, sixth circuit and east. dist. of La.

UNITED STATES
vs.
STEAMBOAT ELEANOR, her tackle, apparel, etc. } No. 3,579.

And now come S. Levi and J. Strauss, loyal citizens of the United States, and for answer to the libel of information herein say:

1st. To the 1, 2 and 3 articles of said libel of information they say, that they admit the seizure of said steamboat Eleanor, her tackle, apparel, by virtue of process issued herein, and that said steamboat, etc., is proceeded against by virtue of the act of Congress of 6th August, 1861, and proclamation of the President of the 15th April, and 16 Aug., 1861, but your respondents aver that said seizure and said proceedings are without color of law and in violation of
25 their rights and ownership in and to said steamboat, &c.

2d. To the 4th article of said libel of information, and to the specifications, 1, 2, 3, 4, and 5, and to the 5 article thereof, they say, that said steamboat Eleanor, etc., was never used or employed knowingly by your respondents in aiding, abetting, or promoting the said insurrection and resistance to the laws, within the meaning of the said act of Congress after the approval thereof, and after said public proclamations of the President, by being used in the transportation of confederate troops in insurrection against the government of the U. S., and in transporting munitions of war and supplies for the said troops; nor was said steamboat, &c., used and employed by your respondents, the owners thereof, in aiding and abetting persons engaged in said insurrection and resistance to the laws within the meaning of the said act of Congress, after the approval of said act,
26 and after said public proclamations of the President, by being used in the transportation of troops of the so-called Confederate States, and in the transportation of munitions of war and supplies for the use of said troops; nor was said steamboat, &c., acquired, sold, or given by your respondents, or by their agent or employee, with intent to use or employ the same for the purpose of aiding, abetting, and promoting said insurrection and resistance to the laws, after the approval of said act of Congress, and after the public proclamations aforesaid, for the purposes aforementioned; nor did your respondents knowingly consent to the use or employment of their said steamboat, etc., for the purpose of aiding, abetting, and promoting said insurrection and resistance to the laws, or of aiding, abetting, and promoting persons engaged therein, after the approval of said act of Congress, and after the proclamations above mentioned, for the purposes aforesaid, nor did your respondents, or their agent or
27 employee suffer said steamboat, etc., to be used or employed in aiding, abetting, or promoting the insurrection proclaimed by the President aforesaid, and in aiding, abetting, or promoting a person or persons engaged in said insurrection after the approval of said act of Congress above mentioned, and after said public proclamations, by permitting the use of said steamboats, &c., as aforesaid, and your respondents say, that said steamboat, &c., was lying in a district under rebel occupation, and if any illegal use was ever made of said steamboat, &c., the same was done by the application of illegal and irresistible physical force against the consent, will, or approbation of your respondents, or their agents or employees; that your respondents are, and always have been loyal citizens of the U. S.; and by no act of theirs, or their agents or employees, and by no uses to which said steamboat, &c., may have been devoted,
28 ought the same be confiscated and condemned to the use of the U. S. as enemy's property.

Wherefore your respondents respectfully pray that said libel may be dismissed with costs, and that steamboat, &c., be restored to them; and they pray for general relief, etc., etc.

(Signed) C. ROSELIUS, *Proctor.*
(Signed) S. LEVY, JR.

Sworn to and subscribed before me, this 22d July, 1865.

(Signed) F. B. VINOT, *D'y Cl'k.*

Notice to take testimony.—Issued November 29th, 1865.

United States circuit court, east. dist. of Louisiana.

UNITED STATES
vs.
THE STEAMER ELEANOR, her tackle, apparel, &c. } No. 3,597.

To C. Roselius, esq.: You are hereby notified that testimony
29 will be taken in the above-entitled cause on Tuesday, the 5th day of December, 1865, at the clerk's office of this court, at 2 o'clock p.m., on behalf of libellant.

New Orleans, November 29th, '65.

(Signed) F. B. VINOT, *D'y Cl'k.*

Marshal's return.

Received November 29th, 1865, and same day, month, and year served a copy of the notice on C. Roselius, esq., personally.

December 1st, 1865.

(Signed) G. HOLLANDER,
D'y U. S. Marshal.

Testimony for libellants.—Filed December 5th, 1865.

UNITED STATES
vs.
ST'R ELEANOR. } No. 3,597.

R. Sanders, sworn for U. S., says: The Eleanor was in the
30 rebel service in 1864. She carried troops, provisions, and quartermaster's stores. Don't know who was her captain. She was in that service during that year at various times. She run from Alexandria to points above. Thinks her capt. was J. Strauss.

Cross-exa.:

Frequently saw her plying up and down the river. Don't know that her services were voluntary. She comes under the head of all the boats. None of those boats rendered their services voluntary. (Dist. att'y objects to this answer.) As quartermaster, my functions consisted in ordering any boat I might see fit for any services that were necessary. The officers in charge of the river transportation saw these orders executed. River transportation was scarce on that stream, the government having none of their own. Never knew an in-
31 stance where transportation was voluntarily offered to the government by these boats. It was obtained by ordering the same, and some cases by impressment. (Dist. att'y objects to all such general questions.) I know nothing in particular in regard to this boat in regard to her impressment.

(Signed) REO. SANDERS.

Sworn to and subscribed before me, this 5th December, 1865.

(Signed) CHS. CLAIBORNE,
U. S. Comm'o'r.

Testimony for claimants.—Filed Dec. 15th, 1865.

UNITED STATES
vs.
STEAMER ELEANOR. } No. 3,597.

Testimony on behalf of claimants taken Dec. 15th, 1865:

John Poff, sworn for claimant, says: I know this boat. Have known her since she was built. Knew her on the Red river
32 since 1858. Have known her in that river during the war in '62, '63, '64 and '65. Commanded her as capt. in '63, and part '64; also in 1862. During the time I commanded the Eleanor, she was impressed into the conf. service more than on one occasion. She was impressed a great many times. She used to carry commissary stores, troops, and other things for the confederate government. I am not aware that the Eleanor ever was voluntarily in the confederate service. The conf. would send me a military order which I had to obey, and had to go to whatever point they would send me. On several occasions I refused to go, and was told that if I did not obey I would be put into the guard-house, and subsequently put into the ranks. I know that the Eleanor was several times taken forcibly
33 possession of by the confederates. The quartermaster of the transportation department impressed the boat in 1864, for the purpose of obstructing the river and prevent the passage of the federal boats. I, myself, and the owner of the boat tried our best to get the boat released, and we even applied to Governor Allen to get her release. He would not give her up; they kept her about 14 days on that occasion. They returned her by request of the owners. The owners wanted either to be paid for the boat or that they should give her up. As near as I could learn, the confederate wanted to sink her in the Red river so as to obstruct the navigation. It was not done because they abandoned the idea, and had no other use for the boat, so that they returned her to the owners. When the Eleanor was returned to the owners, she had been stripped of her fur-
34 niture and movables. They promised to return everything but did not comply, and only returned a portion of the articles.

The owner has never been paid for the things that had been taken. There were verbal objections made by the owner and myself against the taking of the boat; we did not want to loose the boat because she was profitable to us.

Capt. Levy became the owner of the Eleanor in 1863 or '64; it was the common report that Levy purchased the boat to keep out of the confederate service.

(Objected to by the dist. att'y.)

I know it was not profitable at that time to have a boat except to keep out of the confederate service.

I believe in some instances money was given to the clerk to pay for wood, but the boat was never paid for her services.

Cross-exa.:

The orders for impressing were in writing. When she was
35 taken for the purpose of being sunk she had been appraised. I believe in few instances we did business for private parties, but most of the time she was not permitted to carry passengers and freight. She was never permitted to carry freight whilst in conf. employ. Capt. Levy was on board sometimes whilst she was in conf. service. When on board Mr. Levy was either acting as capt. or clerk. When he was on board he did all the duties of a captain as far as he knew.

(Signed) JOHN POFF.

Sworn to and subscribed before me, this 15th Dec., 1865.

(Signed) CHS. CLAIBORNE,
U. S. Com'ner.

James Weymer, sworn for claimant, says: I know the Eleanor; was mate of her in '64 and '65, up to the time the department surrendered. I know that the Eleanor was impressed into the conf. service.
36 When the federal general arrived at Alexandria the Eleanor lay at the head of the falls. She was laying on the lower falls when the confederate authorities put a guard on board; she landed at the head of the falls and waited until she received orders to leave. I was on board when the government of the confederates took her for the purpose of sinking her so as to obstruct the navigation of Red river. All the movables were taken away; some of them were returned, and the rest never came back.

I saw frequently orders to the Eleanor to carry conf. gov't property, such as commissary stores, troops, etc. Had the boat refused, they would have compelled her to obey, I presume, and the captain and officers would have been put in the army, I expect. I went several times for money to the confederate officers for the services rendered by the boat, but never received any. Heard the captain say that he never received any at all.

37 Cross-ex.:

I can't say whether Capt. Levy was a Union man or a friend of the confederates; never heard him express his sentiments. The boat ran in confederate service up to the surrender of the trans-Mississippi.

(Signed) JAMES WEYMER.

Sworn to and subscribed before me, in this 15th Dec., 1865.

(Signed) CHS. CLAIBORNE,
U. S. Com'ner.

Testimony for claimants.—Filed December 18th, 1865.

United States circuit court.

UNITED STATES
vs.
THE STEAMER ELEANOR, tackle, apparel, and furniture. } No. 3,597.

Testimony on behalf of the claimants, taken before Charles Claiborne, U. S. commissioner, December 18th, 1855.

38 James McCluskey, being duly sworn, deposes and says: I was in confederate service on Red river; I know the steamboat Eleanor; I saw her during two or three years on Red river; one occasion, at the evacuation of Alexandria, on the 15th of March, 1864, the Eleanor, as well as other boats, was pressed in the confederate service; she was taking on board private freight; I stopped her from taking on board said freight, and put on her gov. freight and passengers. We had a squadron of dismounted cavalry on the bank for the purpose of regulating these steamboats, and among them the Eleanor, and compelling them to obey orders. I remember having had more trouble with this boat than with any other. I may have put a guard on board of her, but do not remember.

If the captain of the Eleanor had refused to obey orders I would have placed him under arrest, and put another man on board of
39 her, and detailed men to take charge of her. We had two companies composed mostly of steamboat officers, who would be occasionally detailed for that purpose.

(Signed) JAS. McCLOSKEY.

Sworn to and subscribed before me, this 18th December, 1865.
(Signed) CHS. CLAIBORNE,
U. S. Com'ner.

Notice to take testimony.

United States circuit court, eastern dist. of Louisiana.

UNITED STATES
vs.
STEAMER ELEANOR. } No. 3,597.

To C. Roselius, Esq:

You are hereby notified that testimony will be taken in the above entitled cause on Tuesday, the 26th day of December, 1865, at the clerk's office of this court at 12 o'clock m., on behalf of libel-
40 lants.

New Orleans, Dec. 22d, 1865.
(Signed) F. B. VINOT, *D'y Clk.*

Marshal's return.

Received December 23d, 1865, and same day, month, and year, served a copy of the within notice on C. Roselius, esq , personally.
December 23d, 1865.

(Signed) J. J. PREIS,
D'y U. S. Marshal.

Testimony for libellants.—Filed December 26th, 1865.

UNITED STATES
vs.
ST'R ELEANOR. } No. 3,597.

Jno. C. Marsh, for U. S., says: I have seen the Eleanor in Red river running for the conf. service, carrying corn and troops, in '63 and '65. During that time she did also private business.

41 When she first went into the Red river she was owned by Willis Mayne, who died in '63. A man named Jno. Poff commanded her in '63 and '65. She run within military points from Shreveport to Alexandria.

Cross exa.:

The whole of Red river was under military sway at that time. Did work as machinist for the Eleanor as I did for other boats. I don't know whether this boat rendered her services willingly or not to the confederates.

(Signed) JNO. C. MARSH.

Sworn to and subscribed before me, this 26 December, 1865.

(Signed) CHS. CLAIBORNE,
U. S. Com'ner.

Testimony for claimants.—Filed January 12th, 1866.

UNITED STATES
vs.
ST'R ELEANOR. } No. 3,957.

42 Geo. D. Hite, sworn for claimant, says: I knew the Eleanor in the Red river, from the fall of the city New Orleans up to the surrender of the trans-Mississippi department. The Eleanor was ordered by the chief quartermaster of the confederate to transport corn from a point below Shreveport to Alexandria; these were military orders; W. H. Thomas was then acting as chief quartermaster.

I know W. McMasters, he was quartermaster of the river transportation at Shreveport; being shown docts. A, B, C, D, E, F, G, H, says they all have the genuine signature of said McMasters, except doct. X, which is signed by his clerk. Capt. McMasters had charge of the river transportation, and had the right to impress steamboats. He has a farm about 130 miles from Shreveport, where he resides, and is not easy of access.

I do not know of the Eleanor ever offering voluntary service.
43 In March, 1864, she was taken possession of by Major Hurd, a quartermaster, by order of Gen'l Smith, for the purpose of sinking her in Red river, at a place some 30 miles below Shreveport. They stripped her of all her outfit that was considered valuable, but finally considered that they would not sink her, and brought her back to Shreveport. When she was brought back to Shreveport Capt. Levi applied to Major Hurd for the return of his boat, and through the intervention of Gov. Allen she was returned to him.

I know that Mr. Levi held his position as commander of the boat to be exempted from being conscripted into the military service. They returned him his boat minus all her furniture and outfit. Resistance was made by the confederates to retain this boat, by through the intervention of Gov. Allen she was released to the owner.

The owner of the Eleanor did not voluntarily give up this
44 boat, he made serious resistance, and objected to the taking of her by the confederates. Under the circumstances, the owner could not forcibly resist the orders of the confederates. The confederate bayonets were there. There was no civil law at the time. The military ruled supreme. After the return of the boat, she worked for the confederates under military orders, which she was compelled to obey; she never rec'd a dollar for services rendered, or for the outfit and furniture taken. The capt. was treated very badly.

Cross-exa.:

I was in the quartermaster department for the State under Gov. Allen. This was in March, 1864, I think. I had a previous knowledge of the Eleanor, and previous to my employ in the quartermaster depart. of the State. After the fall of N. Orleans, I was living in Shreveport. Before the fall of N. Orleans, she was running between N. Orleans and Shreveport, and a little above. When
45 the city of N. Orleans fell, the Eleanor lay at the foot of Poydras street.

At that time she was ordered into the Red river, by Gen'l Lovell. I have been on board this boat when orders came to the capt. The capt. in my presence objected to obey the orders of the confederate officers, when the orders were presented. He assigned for reasons, that he did not like to work for them, that he could make more money by working for himself.

He assigned no political reason for refusing to carry conf. freight. I do not know that any force was ever used against the Eleanor. The owner, knew it was unsafe to disobey. I am personally acquainted with Capt. McMasters. Have seen his commission, know his handwriting. Saw him write frequently. I know only one instance where a boat received certified accounts for their ser-
46 vices. The Eleanor never rec'd any. Don't think she ever had a flag, except one with her name on. Don't know that she ever carried freight for the confederates without an order.

(Signed) GEO. D. HITE.

Sworn to and subscribed before me, this 12th January, 1866.

(Signed) CHS. CLAIBORNE, *U. S. Com'ner.*

Document A.—Filed Jan. 12th, 1866.

SHREVEPORT, *February 12th*, 1865.

Capt. Jno. Toff, com'd'g steamer Eleanor:

Will at once proceed to Menden, La.; after the delivery of cargo on board, will report to Capt. Harper, A. S. S., at Menden, for a load of hogs for this place.

You will try and get from Capt. Harper sufficient lumber to built the necessary pens for the safety of same.

(Signed) W. McMASTER,
Capt. A. Q. M.

47 *Document B.—Filed Jan. 12th, 1866.*

RIVER TRANSPORTATION OFFICE,
Shreveport, Jan. 22d, 1865.

Capt. Jno. Poff, steamer Eleanor:

You will proceed immediately with your boat to Menden, La., and then report to Gen'l Ferney.

It is very important that you should be there at the earliest possible moment; you will therefore use no delay in reporting as above.

(Signed) W. McMASTER,
Capt. and A. Q. M.

Document C.—Filed January 12th, 1866.

OFFICE STAFF QR. MR.

Capt. Wm. McMasters:

SIR: Can you let me have a steamboat to go up the river
48 about (20) twenty miles for (2,000) two thousand bushels of corn.

Let me know when you can send it.

I am, capt., very resp't.,

(Signed) E. H. EZELL,
Maj. and Q. M.

Jan. 18th, 1865.

Document D.—Filed Jan. 12th, 1865.

SHREVEPORT, *Feb'y 20th*, 1865.

Capt. Jno. Poff, com'd'g steamer Eleanor:

Will report to Capt. Jos. B. Smith, A. C. S., for the transportation of corn.

You will make your arrangements so as to leave by day in the morning; an agent will go on board.

(Signed) W. McMASTERS,
Capt. and A. Q. M.

49 *Document E.—Filed Jan. 12th, 1866.*

SHREVEPORT, LA., *March 3d*, 1865.

Capt. Jno. Poff, st'r Eleanor:

Will, proceed with the balance of corn on board to Marshall's plantation above Shreveport, delivering same at that point.

When discharged, you will report to this office.

(Signed) W. McMASTERS,
Capt. and A. Q. M.

Document F.—Filed Jan. 12th, 1866.

SHREVEPORT, LA., *Mar. 7, '65.*

Capt. John Poff, steamer Eleanor:

Will, in arrival at Menden, La., report to Maj. Gen'l Churchill, at camp Magruder for transportation of baggage to this point.

(Signed) WM. McMASTERS,
Capt. and A. Q. M.

50 *Document G.—Filed Jan. 12th, 1866.*

RIVER TRANSPORTATION OFFICE,
Shreveport, Feb. 5th, 1865.

Capt. Jno. Poff, com'd'g steamer Eleanor:

Will, instead of going to Minden, proceed up the river to any of the government wood piles and take on board as much as can be, to get here by Tuesday night. You will endeavor to hire negroes to assist in loading, impressing upon planters the necessity of having as much here by that time as possible, as the wood is wanted for a special purpose.

You will give receipts to be paid at this office for the wood and for any assistance you may get in putting the wood on board.

(Signed) WM. McMASTERS,
Capt. and A. Q. M.

51 *Document H.—Filed Jan. 12th, 1866.*

SHREVEPORT, LA., *April 14th*, 1865.

Capt. S. Levy, jr., com'd'g st'r Eleanor:

Will proceed to Carolina Bluff, reporting to Capt. Head, A. Q. M., for a load of corn for Capt. Wolfe, this place.

(Signed) WM. McMASTER,
Capt. and A. Q. M.

Document X.—Filed Jan. 12th, 1866.

OFFICE RIVER TRANSPORTATION,
Shreveport, March 17th, 1865.

Capt. Jno. Poff, steamer Eleanor:

Will proceed to Carolina Bluff, and report to Captain Haldeman for a battery to be taken on board at that point.

(Signed) WM. McMASTERS,
Capt. and A. Q. M.

52 *Supplemental and amended answer.—Filed March 23d, 1866.*

UNITED STATES
vs.
STEAMBOAT ELEANOR. } No. 3,597.

U. S. circuit court, 6th circuit and east. dist. of La.

The supplemental and amended answer of S. Levi and J. Strauss, claimants of the steamer Eleanor, etc., respectfully represents, that your claimants have been advised and verily believe and maintain, that the U. S. are not entitled to prosecute this suit nor to condemn the said steamer, because, by the convention entered into at New Orleans on the 26th May, 1865, between General E. K. Smith, commanding the trans-Mississippi department, and Major General E. R. S. Canby, commanding the military division of West Mississippi, putting an end to hostilities in Louisiana, surrendering all munitions of war, military stores, and public property, etc., etc., in the
53 trans-Mississippi department, commanded by said Gen. E. K. Smith, it was expressly stipulated and agreed by the 4 paragraph of said convention that "private property will not be interfered with unless required for public use," etc., and inasmuch as the steamer Eleanor was private property within the limits of the trans-Mississippi department, commanded by said Gen. E. K. Smith, at the time of the signing and executing the aforesaid convention, she is protected against all and every claim of forfeiture and confiscation of the U. S. which had ratified and sanctioned the aforesaid convention, and she cannot be molested for any act of a hostile nature done prior to the aforesaid 26 May, 18[illegible], the day of the entering into and executing said convention; and whereas, all the acts of which the libel complains, and on which the U. S. claim to confiscate the said
54 steamer Eleanor, occurred prior to the 26 May, 1865, and while hostilities existed in the trans-Mississippi department, which were terminated by the aforesaid convention, which in consideration of the cessation of hostilities, the surrender of all arms, military stores, and public property extended protection to and abandoned all claim to private property. The respondents pray this hon. court to dismiss the libel and restore said steamer to the claimants and owners.

(Signed) C. ROSELIUS, *Proctor.*

Order.

Let this amended plea be filed.
March 23d, 1866.

(Signed) E. H. DURELL, *Judge.*

Hearing and submission.—From minutes, March 23d, '66.

NEW ORLEANS, *Friday, March 23d*, 1866.

Court met pursuant to adjournment. Present, Hon. E. H. Durell, dist. judge.—November term, 1865.

55 UNITED STATES
vs.
ST'R ELEANOR, her tackle, etc. } No. 3,597.

This cause was called up for trial. District attorney for libellants, C. Roselius, esq., for defendant, when the same was submitted upon the pleadings and the evidence in the record, with leave to the defendant to furnish a copy of the military convention entered into between Generals Canby and Kirby Smith, on the 26 May, 1865.

Final decree.

Circuit court of the United States, sixth circuit and eastern dist. of Louisiana.—April term, 1866.

NEW ORLEANS, *June 30th*, 1866.

Court met pursuant to adjournment. Present, Hon. E. H. Durell, dist. judge.

UNITED STATES
vs.
THE STEAMER ELEANOR. } No. 3,597.

56 For reasons orally assigned by the court, in the case of the United States *vs.* the steamer Frolic, No. 3,595 of the docket, it is ordered, adjudged, and decreed that the libel be dismissed, and that the property seized be restored to the claimant upon payment of all costs and for a fee of $350 to the district attorney.

Judgment rendered June 30th, 1866.

Judgment signed June 30th, 1866.

(Signed) E. H. DURELL, *Judge.*

Petition of appeal.—Filed July 6th, 1866.

U. S. circuit court.

UNITED STATES
vs.
STEAMER ELEANOR. } No. 3,597.

To the hon. the judges of the circuit court of the United States for the sixth circuit and eastern district of La.

The petition of Jno. K. Goodloe, United States attorney, in the name and in the behalf of the United States, libellants herein,
57 respectfully represents: That a final sentence and decree was entered on the 30th day of June, 1866, in the above-entitled cause, in said circuit court of the east. dist. of La., in and by which

said final sentence and decree it was ordered, adjudged, and decreed that the libel herein be dismissed, and the property seized be restored to claimants; that said final sentence and decree is adverse to libellants and to their manifest injury and prejudice; that the matter in controversy exceeds in value the sum of two thousand dollars; that your petitioner, in behalf as aforesaid, feels aggrieved by the rendition of said final decree, and is advised that the same is erroneous and ought to be reversed.

Wherefore your petitioner, in behalf as aforesaid, doth hereby appeal from said judgment to the Supreme Court of the United States, returnable on the first Monday of next December, and prays
58 this hon. court to grant him a suspension appeal from said final decree, the same to operate as a supersedeas, and that said final sentence and decree may be reversed, and such other decree thereupon made as to the said circuit court shall seem just; and that a transcript of the record and proceedings in this cause, duly authenticated, may be sent up to the next Supreme Court without delay.

(Signed) C. S. KELLOGG,
Ass't U. S. Attorney.

Order.

An appeal to operate as a supersedeas is allowed in this case, as prayed for, returnable to the Supreme Court of the United States the first Monday of December next, the appellants being by law dispensed from giving bond and security in judicial proceedings.

July 6th, 1866.

(Signed) E. H. DURELL, *Judge.*

59 UNITED STATES OF AMERICA:

Circuit court of the United States, sixth circuit and eastern district of Louisiana.

CLERK'S OFFICE.

I, Charles Claiborne, clerk of the circuit court of the United States for the sixth circuit and eastern district of Louisiana, do hereby certify that the foregoing 58 pages contain and form a full, complete, true, and perfect transcript of the record and proceedings had, together with all the evidence adduced on the trial of the case of the United States *vs.* the steamer Eleanor, her tackle, apparel, &c., No. 3,597 of the docket, so far as the same now remain of record or on file in said court.

Witness my hand and the seal of said court, at the city of New Orleans, this 18th day of August, A. D. 1866.

[SEAL.] CH'S CLAIBORNE, *Clerk.*

[5-cent int. rev. stamp.]

I, E. H. Durell, United States judge for the eastern district of Louisiana, do hereby certify that Charles Claiborne, whose name is signed to the above certificate as clerk of the circuit court of the

United States for the sixth circuit and eastern district of Louisiana, was, at the time of signing said certificate, and is now, the clerk of said court; that said certificate is in due form of law, and that full faith and credit are due to his official attestations as such clerk.

Given under my hand and seal, at the city of New Orleans, in said district, this 18th day of August, A. D. 1866.

E. H. DURELL, *Judge.*

[5-ct. int. rev. stamp.]

60 THE UNITED STATES OF AMERICA,
Eastern District of Louisiana:

The President of the United States, to John Strous, claimant and defendant, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at the city of Washington on the first Monday of December next, pursuant to a petition and order of appeal filed in the clerk's office of the circuit court of the United States for the 6th circuit and eastern district of Louisiana, to answer the appeal taken by the United States of America in this cause, and that you show cause, if any there be, why the judgment rendered against the said United States, as is in said petition mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the honorable Salmon P. Chase, Chief Justice of the Supreme Court of the United States, this 7th day of July, in the year of our Lord one thousand eight hundred and sixty-six.

E. H. DURELL, *Judge.*

Marshal's return.

Received July 12th, 1866, and on the same day, month, and year served a copy of the within citation on Jno. Strous, the claimant and defendant named herein, by leaving the same in the hands of C. Roselius, esq., attorney for said Strous, at the office of said attorney, No. 78 Custom-house st., in this city.

M. EGAN, *D'y U. S. Marshal.*

New Orleans, July 12, 1866.

61 THE UNITED STATES OF AMERICA,
Eastern District of Louisiana:

The President of the United States to S. Levy, jr., claimant and defendant, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at the city of Washington, on the first Monday of December next, pursuant to a petition and order of appeal filed in the clerk's office of the circuit court of the United States for the 6th circuit and eastern district of Louisiana, to answer the appeal taken by the United States of America in this cause, and that you show cause, if any there be, why the judgment rendered against the said United States, as in said petition men-

tioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the honorable Salmon P. Chase, Chief Justice of the Supreme Court of the United States, this 7th day of July, in the year of our Lord one thousand eight hundred and sixty-six.

E. H. DURELL, *Judge.*

62 *Marshal's return.*

Received July 12th, 1866, and on the same day, month, and year served a copy of the within citation on S. Levy, jr., the claimant and defendant named herein, by leaving the same in the hands of C. Roselius, esq., attorney for said Levy, at the office of said attorney, No. 78 Custom-house street, in this city.

M. EGAN, *D'y U. S. Marshal.*

New Orleans, July 12, 1866.

Filed 18th October, 1866.